

3-1-1987

## CRIMINAL PROCEDURE Bail Bonds: Revise Procedures

E. Dovin

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>

 Part of the [Law Commons](#)

---

### Recommended Citation

E. Dovin, *CRIMINAL PROCEDURE Bail Bonds: Revise Procedures*, 3 GA. ST. U. L. REV. (1987).  
Available at: <https://readingroom.law.gsu.edu/gsulr/vol3/iss2/7>

This Peach Sheet is brought to you for free and open access by the Publications at Reading Room. It has been accepted for inclusion in Georgia State University Law Review by an authorized editor of Reading Room. For more information, please contact [mbutler@gsu.edu](mailto:mbutler@gsu.edu).

**CRIMINAL PROCEDURE*****Bail Bonds: Revise Procedures***

<b>CODE SECTIONS:</b>	O.C.G.A. §§ 17-6-31 (amended), 17-6-70—17-6-72 (amended)
<b>BILL NUMBER:</b>	HB 35
<b>ACT NUMBER:</b>	765
<b>SUMMARY:</b>	The Act substantially revises the Code sections relating to bail bonds to change the procedures for surrender of the defendant by a surety, clarify bond forfeitures, provide specific procedures for hearing, and set forth criteria for judgments of forfeiture.
<b>EFFECTIVE DATE:</b>	July 1, 1987

***History***

Prior law addressing bail bond procedures, in O.C.G.A. § 17-6-31, did not “constitute comprehensive regulation of bail-bonding procedures,” but merely established the procedure for the surety to follow when surrendering a principal.<sup>1</sup> The lack of specific procedures enabling the surety to recover a bond when the defendant failed to appear, but later either surrendered or was apprehended, prompted the 1986 amendments to this Code section.<sup>2</sup>

The 1986 Act allowed the surety to recover up to ninety percent of the forfeiture if the surety apprehended or caused the surrender of the defendant.<sup>3</sup> However, there were many areas in which the procedures remained restrictive. For example, a surety could only surrender the defendant to the sheriff if the court were not in session,<sup>4</sup> and the surety faced immediate forfeiture of a bond when the defendant failed to appear.<sup>5</sup> The process was burdensome on the bail bonding companies and those individuals who secured bonding service.<sup>6</sup> The laws governing bond-

- 
1. *City of Macon v. Davis*, 251 Ga. 332, 334, 305 S.E.2d 116, 118 (1983).
  2. *See, e.g., American Druggists' Ins. Co. v. Harris*, 177 Ga. App. 481, 339 S.E.2d 759 (1986) (surety was denied any portion of the funds paid to the court when the principal failed to appear, although principal was subsequently arrested and brought to trial).
  3. 1986 Ga. Laws 1588 (formerly found at O.C.G.A. § 17-6-72(e)(2) (Supp. 1986)).
  4. 1986 Ga. Laws 1588 (formerly found at O.C.G.A. § 17-6-31 (Supp. 1986)).
  5. 1986 Ga. Laws 1588 (formerly found at O.C.G.A. § 17-6-70(a) (Supp. 1986)).
  6. Telephone interview with Representative Betty J. Clark, House District No. 55

ing procedures had not been expanded to deal with the changing nature of the process. HB 35 is a response to the 1986 amendment and shifts the burden of liability for a defendant's failure to appear from the bailbondsman to the state.<sup>7</sup>

### HB 35

The Act amends the Code sections relating to bail bonding procedures by adding more specific language and expanding the scope of coverage. Under the amended O.C.G.A. § 17-6-31, a surety can surrender the defendant to the "responsible law enforcement officer of the jurisdiction in which the case is pending" as well as to the sheriff when the court is not in session.<sup>8</sup> Additionally, surrender of the defendant can be made in open court and the principal will be considered surrendered if the judge "dead docket the case prior to the entry of judgment."<sup>9</sup> Prior law had stated that the surrender was established only by a plea of guilty or nolo contendere or by a finding of guilt by a judge or jury.

The Act amends O.C.G.A. § 17-6-70 to require that the surety be given seventy-two hours notice of the defendant's required appearance before the bond can be considered forfeited.<sup>10</sup> This requirement provides the surety with an opportunity to obtain an appearance by the defendant before any forfeiture proceedings begin. However, seventy-two hours notice will not be necessary if "the time for appearance is within 72 hours from the time of arrest, provided the time for appearance is stated on the bond," or if the defendant "is given actual notice in open court."<sup>11</sup>

The Act amends O.C.G.A. § 17-6-71(a) to require an execution hearing upon the defendant's failure to appear "not sooner than 60 days but not later than 90 days after" the defendant's failure to appear; and notice thereof can be given by personal service to the surety.<sup>12</sup> Prior law required only that the hearing be held not later than ninety days after the principal's failure to appear. The sixty day period, before the hearing may be held, provides an opportunity for the surety to be held harmless if the principal is arrested or surrenders after his failure to appear.<sup>13</sup>

The Act substantially amends O.C.G.A. § 17-6-72 to require official written notice of the detention of the defendant "in a penal institution in another jurisdiction," before remission of the forfeiture to the surety.<sup>14</sup> If

---

(Apr. 30, 1987).

7. Telephone interview with Douglas C. Bell, Jr., Governor's Criminal Justice Coordinating Council (May 22, 1987) [hereinafter Bell Interview].

8. O.C.G.A. § 17-6-31 (Supp. 1987).

9. *Id.*

10. O.C.G.A. § 17-6-70(b) (Supp. 1987).

11. *Id.*

12. O.C.G.A. § 17-6-71(a) (Supp. 1987).

13. Bell Interview, *supra* note 7.

14. O.C.G.A. § 17-6-72(b) (Supp. 1987).

within 180 days of this notice the state should fail to place a detainer on the principal, the surety will be relieved of his bond obligation.<sup>15</sup> Furthermore, if the "prosecution does not try the charges against a defendant within a period of three years in the case of felonies and two years in the case of misdemeanors," the surety is relieved of liability.<sup>16</sup> If the principal is not in a penal institution, but merely in custody within the jurisdiction in which forfeiture proceedings were commenced, notice of this fact relieves the surety of liability.<sup>17</sup>

Finally, the Act amends O.C.G.A. § 17-6-72 by declaring that no judgment should be rendered on an appearance bond if the defendant could not return to the jurisdiction because of active military duty.<sup>18</sup> In an attempt to encourage the surety to find principals who have failed to appear, the Act provides that if the surety can produce the principal within two years of his failure to appear, the surety will receive a fifty percent refund on the bond forfeiture.<sup>19</sup>

*E. Dovin*

---

15. *Id.*

16. O.C.G.A. § 17-6-72(c) (Supp. 1987).

17. O.C.G.A. § 17-6-72(d) (Supp. 1987).

18. O.C.G.A. § 17-6-72(e) (Supp. 1987).

19. O.C.G.A. § 17-6-72(f)(1) (Supp. 1987).